

111

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.1023 of 2021 (O&M)
Date of Decision: 16.07.2021**

M/s SASA Hospitality Pvt. Ltd.

....Petitioner

VERSUS

Veena Khandelwal & Anr.

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Pooja Aganpal, Advocate with
Mr. Gurmandeep Singh Sullar, Advocate for the petitioner.

Ms. Aanchal Basur, Advocate with
Mr. Rana Gurtej Singh, Advocate for the respondents.

ALKA SARIN, J.

Heard through video conferencing.

CM-4579-CII-2021

This is an application for exemption from filing certified and typed copies of the Annexures P-1 to P-11.

CM is allowed as prayed for.

CM-4720-CII-2021

This is an application for placing on record Annexures A-1 to A-6 and for exemption from filing certified and typed copies thereof.

CM is allowed as prayed for subject to just exceptions.

CR No.1023 of 2021

This is a revision petition under Article 227 of the Constitution of India for setting aside order dated 24.03.2021 passed by the Trial Court whereby application under Order 15 Rule 5 CPC filed by the plaintiffs-

respondents has been allowed and the defendant-petitioner has been ordered to pay mesne profit to the tune of ₹1,79,567/- per month from February 2020 to March 2021 and continuously during the pendency of the civil suit.

Brief facts relevant to the present *lis*, as culled out from the revision petition as well as the Zimni orders available on the website of the Trial Court, are that plaintiffs-respondents are the owners of Unit No.PSP C-SF-2006, Tower C, Second Floor, Palm Springs Plaza, Golf Course Road, Sector 54, Gurugram, Haryana and leased out the said premises to the defendant-petitioner vide lease deed dated 11.08.2016 (Annexure P-1). Due to non-payment of rent, a legal notice dated 21.10.2020 (Annexure P-2) was sent to the defendant-petitioner *inter-alia* calling upon it to vacate the premises by 31.10.2020, pay ₹20,43,642/- as remainder rental amount due with interest, pay ₹3,51,527/- towards pending electricity charges and ₹4,54,072/- towards pending maintenance charges. The defendant-petitioner sent a reply dated 08.11.2020 (Annexure P-3) to the said legal notice stating therein that due to the poor sales, as a result of lockdown imposed due to Covid-19 Pandemic, the defendant-petitioner was not in a position to pay the rent of the demised premises and had intimated to the plaintiffs-respondents that the defendant-petitioner would hand over the keys/possession of the premises in the month of January 2020 and had demanded the security deposit of ₹5,38,700/- to be returned to it. It was further stated in the reply that the security deposit was not refunded and the defendant-petitioner was asked to hold the keys of the premises. It has further been stated in the reply that the possession was handed over in January 2020 and only the keys of the premises are still with the defendant-petitioner and that the defendant-petitioner had paid the electricity and maintenance till it was in possession.

On 04.01.2021 the plaintiffs-respondents filed a civil suit for eviction,

recovery of arrears and damages against the defendant-petitioner. A copy of the plaint has been annexed as Annexure P-4. On 11.01.2021 the Trial Court issued notice to the defendant-petitioner for 03.02.2021.

On 03.02.2021 the defendant-petitioner put in appearance in the civil suit. An interim prayer was made on behalf of the plaintiffs-respondents that the suit premises had been abandoned by the defendant-petitioner after the filing of suit and receipt of notice and the same has been taken into possession by the plaintiffs-respondents and sought a stay order from the Trial Court against forcible dispossession and interference in the possession of the plaintiffs-respondents over the suit premises to which counsel for the defendant-petitioner sought time to consult his client and take instructions. The plaintiffs-respondents had filed an application under Order 39 Rules 1 and 2 CPC. The order passed by the Trial Court on 03.02.2021 is annexed as Annexure P-6. On 09.02.2021 the defendant-petitioner filed a written statement (Annexure P-5) and an application under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint. On 15.02.2021 the counsel for the defendant-petitioner made a statement before the Trial Court mentioning that the defendant-petitioner was in possession of the suit premises. The order passed by the Trial Court on 15.02.2021 is annexed as Annexure P-8.

On 09.03.2021 the defendant-petitioner filed a reply to the application under Order 39 Rules 1 and 2 CPC which had been filed by the plaintiffs-respondents. On 09.03.2021 itself a separate application under Order 15 Rule 5 CPC (Annexure P-9) was moved on behalf of the plaintiffs-respondents. In this application it was averred that the defendant-respondent had vacated the suit premises on 21.01.2021 but had put it's lock on the suit premises. It was also stated that on 15.02.2021 the counsel for the defendant-

petitioner had recorded his statement that it remained in possession of the suit premises.

On 24.03.2021 the Trial Court dismissed the application which had been filed by the defendant-petitioner under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint. On 24.03.2021 itself the defendant-petitioner filed it's reply to the application (Annexure P-9) filed by the plaintiffs-respondents under Order 15 Rule 5 CPC. After hearing arguments, the Trial Court vide impugned order dated 24.03.2021 (Annexure P-11) disposed off the application ordering payment of mesne profits at the rate of tenancy being ₹1,79,567/- per month w.e.f. February 2020-March 2021 and continuously during the pendency of the civil suit. In the impugned order (Annexure P-11) it was noticed by the Trial Court that the defendant-petitioner had admitted it's possession and also admitted retention of the keys.

On 06.04.2021 the defendant-petitioner filed a complaint (Annexure P-10) with the Bar Council of India against it's counsel alleging that the counsel had made a false statement before the Trial Court on 15.02.2021 that the defendant-petitioner was in possession of the suit premises whereas in reality it was not in possession of the suit premises. On 06.04.2021 a new counsel appeared in the Trial Court on behalf of the defendant-petitioner. The order passed by the Trial Court on 06.04.2021 (Annexure A-1) reads as under :

“Fresh Vakalatnama filed on behalf of defendant. One short adjournment is sought to go through the brief and make compliance. The same is opposed by Ld. counsel for plaintiffs stating the consequences of failure to make payment are liable to ensue. Adjournment Accorded. Let, further proceedings in the matter be undertaken on 19.04.2021”.

Thereafter, on 19.04.2021 the defendant-petitioner filed an application before the Trial Court to withdraw the Vakalatnama given to it's earlier counsel. The said application was allowed by the Trial Court on 19.04.2021 itself. The defendant-petitioner also moved a fresh application under Order 7 Rule 11 read with Section 151 CPC (Annexure A-4). The plaintiffs-respondents also filed an application under Section 151 CPC (Annexure A-6) praying for striking off the defence of the defendant-petitioner. The order passed by the Trial Court on 19.04.2021 is annexed as Annexure A-2.

On 23.04.2021 the present revision petition was filed. Upon certain objections raised by the Registry, the revision petition was refiled on 28.04.2021.

On 07.07.2021 the Trial Court struck off the defence of the defendant-petitioner for having failed to pay the arrears of rent to the plaintiffs-respondents. This order is not under challenge in the revision petition.

Learned counsel for the defendant-petitioner has contended that the earlier counsel had made a false statement before the Trial Court on 15.02.2021 that the defendant-petitioner was in possession of the suit premises whereas in reality it was not in possession of the suit premises and, as such, there was no occasion for the Trial Court to order payment of mesne profits. According to counsel, the defendant-petitioner had never authorised it's earlier counsel to make a statement in Court that the defendant-petitioner was in possession of the suit premises and that because of a wrong stand being taken by the counsel the defendant-petitioner ought not to be burdened with the mesne profits. Learned counsel drew the attention of this Court to the photographs Annexure P-7 to contend that the plaintiffs-respondents

were in possession of the suit premises as they had put their own lock and posted their own security guard. He also argued that the fact that the plaintiffs-respondents had filed an application under Order 39 Rules 1 and 2 CPC seeking a stay order from the Trial Court against forcible dispossession and interference in the possession of the plaintiffs-respondents over the suit premises was sufficient to prove that the defendant-petitioner was no longer in possession of the suit premises and hence not liable to pay any mesne profits.

Per contra, learned counsel for the plaintiffs-respondents have argued that the defendant-petitioner is now concocting a story about his earlier counsel not being authorised to make any statement on 15.02.2021 merely to try and wriggle out of an admission made on it's behalf. It is argued that there no averment in the written statement dated 09.02.2021 (Annexure P-5) filed by the defendant-petitioner that it was no longer in possession of the suit premises. As such, the statement made by it's counsel on 15.02.2021 was correct. It is further submitted that in the email dated 23.01.2021 sent by the plaintiffs-respondents to the defendant-petitioner and others (part of Annexure P-9) it is clearly mentioned that the defendant-petitioner had abandoned the suit premises and that the plaintiffs-respondents would be taking charge of it to protect the same. According to the counsel there is no document whereby the defendant-petitioner terminated the tenancy and handed possession of the suit premises to the plaintiffs-respondents and therefore the defendant-petitioner was liable to pay mesne profits as per Order 15 Rule 5 CPC.

I have heard learned counsel for the parties.

In the present case the defendant-petitioner is canvassing that it had already vacated the suit premises and is, therefore, not liable to pay any

mesne profits to the plaintiffs-respondents. However, there is no assertion by the defendant-petitioner in its written statement (Annexure P-5) that it had handed over possession of the suit premises on such and such date to the plaintiffs-respondents. There is nothing on record to show that the defendant-petitioner had handed over possession of the suit premises to the plaintiffs-respondents. Infact in para 15 of the plaint (Annexure P-4) it is *inter-alia* averred by the plaintiffs-respondents that *“That the defendant continues to be in possession of the property but refuses to pay the rental amount owed by him to the plaintiffs”*. The corresponding para 15 in the written statement dated 09.02.2021 (Annexure P-5) reads as *“Para No.15 of the plaint is matter of record”*. Once the defendant-petitioner has not denied in its written statement that it is in possession of the suit premises it cannot take a contrary stand merely to avoid paying the mesne profits. It may be noticed that till date the defendant-petitioner has not sought to withdraw or amend its written statement dated 09.02.2021 (Annexure P-5). There also no assertion that the earlier lawyer had made incorrect averments in the said written statement.

Further, for reasons best known to the defendant-petitioner, it has not placed on record the reply filed by it to the application under Order 15 Rule 5 CPC (Annexure P-9) though in the impugned order dated 24.03.2021 (Annexure P-11) it is noticed that a reply was filed on 24.03.2021. A perusal of the impugned order dated 24.03.2021 (Annexure P-11) also shows that the defence raised by the defendant-petitioner was that *“the application is not maintainable and has been moved to fill up the lacuna of plaint. It is denied that defendant has refused to pay the agreed rent of arrears of maintenance and electricity since February 2020. It is submitted that defendant asked plaintiffs before lock down that he wants to*

vacate the premise due to financial problem. However, plaintiff asked the defendant not to vacate the suit premise and to pay the rent amount as and when the same is available. A prayer for dismissal of the application in hand is made". Thus, there is no objection taken by the defendant-petitioner that it had already vacated the suit premises. Infact, the Trial Court has recorded in the impugned order that *"It is agitated that defendant does not intend to occupy the demised premise, yet while being specifically asked in this respect in the Court, the possession has been admitted and the keys have been admitted to be retained with defendant"*.

Thus, the possession over the suit premises by the defendant-petitioner is admitted in it's written statement, in the statement made by it's counsel on 15.02.2021 and on 24.03.2021 when the matter was argued before the Trial Court. It is only after almost 12 days of the passing of the impugned order against the defendant-petitioner that a bogey was raised about it's earlier counsel making a false statement before the Trial Court on 15.02.2021. Even then, neither the contents of the written statement dated 09.02.2021 were disputed nor the stand taken by the earlier counsel on 24.03.2021 questioned. Only the statement made by the earlier counsel on 15.02.2021 was disputed.

Even according to the lease deed dated 11.08.2016 the lessee i.e. the defendant-petitioner can terminate the agreement by giving three months notice in writing to the lessor i.e. the plaintiffs-respondents and upon such termination the lessee shall handover physical vacant possession of the premises to the lessor and simultaneously the lessor shall refund the interest free security deposit after deducting any dues/any major damages. There is no such notice available on the record nor the issuance of any such notice terminating the lease deed has been pleaded by the defendant-petitioner.

Counsel for the defendant-petitioner is unable to explain as to how in the absence of such a notice the defendant-petitioner could handover possession of the suit premises to the plaintiffs-respondents. The lease deed does not contemplate the lessee i.e. the defendant-petitioner simply walking out of the suit premises, before the expiry or termination of the lease, without giving three months notice to the lessor i.e. the plaintiffs/respondents.

Further, the email dated 23.01.2021 sent by the plaintiffs-respondents to the defendant-petitioner (part of Annexure P-9) and the photographs (Annexure P-7) also prima facie show that the defendant-petitioner had seemingly abandoned the suit premises and that the plaintiffs-respondents had to take steps to protect the same. That by itself would not amount to handing over of possession of the suit premises by the defendant-petitioner to the plaintiffs-respondents. There is no document to show that the defendant-petitioner terminated the tenancy and handed possession of the suit premises to the plaintiffs-respondents.

No other point has been argued or urged. In view of the discussion above, this Court is satisfied that there is no error of jurisdiction by the Trial Court while passing the impugned order dated 24.03.2021 (Annexure P-11). The said order is well-reasoned and this Court finds no merit in the contentions raised by the counsel for the defendant-petitioner. The present revision petition being devoid of any merit is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

July, 16 2021

jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO